IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 11908 of 2007(P)

PETITIONER:

DR. JOSE KOSHY GEORGE,
MANAGING DIRECTOR, M/S. JOSCO HOSPITAL (P) LTD.,
EDAPPON, PANDALAM.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM),
SRI.PRASANTH M.P.

RESPONDENTS:
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1. **THE ASSISTANT ENGINEER,**
   KERALA STATE ELECTRICITY BOARD,
   ELECTRICAL SECTION, NOORANAD.

2. **THE DEPUTY CHIEF ENGINEER,**
   ANTI POWER THEFT SQUAD (HQ),
   KERALA STATE ELECTRICITY BOARD, VIGILANCE WING,
   VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

3. **THE KERALA STATE ELECTRICITY BOARD,**
   REPRESENTED BY ITS SECRETARY,
   THIRUVANANTHAPURAM.

BY ADV. SRI. JOSE J. MATHEIKEL, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.11908 OF 2007-P

Judgment

The petitioner attacks Ext.P4 order on various grounds. One of the grounds urged before me is that the appellate authority has acted under the dictation of the Board of Directors of the KSEB. That will be evident from the following passage in Ext.P4 :

> *"Even though this is the appellate authority to consider the averments of the consumers regarding the APTS cases, K.S.E.Board is the supreme authority over the issues pertaining to cases of Generation, Transmission or Distribution. Hence the undersigned has no other way except to obey the order depicted in the para supra. And in view of the above, it is hereby ordered as follows."*

The above quoted portion of the impugned order would show that the contention of the petitioner is correct. The appellate authority did not apply his mind to the facts and arrive at an independent decision. He simply followed the direction issued by the superior authority. So, the impugned order is vitiated by dictation. See the concept of dictation explained by the learned author H.W.R.Wade in his Administrative Law 8th edition, the relevant portion of which reads as follows :

> *"Closely akin to delegation and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper*

> *authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them."*

In view of the above legal position, Ext.P4 is untenable. Accordingly, it is quashed. The 2nd respondent is directed to pass fresh orders on the appeal filed by the petitioner after affording an opportunity of being heard to it, without being influenced by the directions of the Board of the KSEB. This, the said respondent shall do within two months from the date of receipt of a copy of this Judgment. The petitioner shall produce a copy of this Judgment before the 2nd respondent within one month from today. The interim direction earlier given against disconnection will remain in force for a further period of four months from today or till the 2nd respondent passes fresh orders on the appeal, whichever is earlier.

The Writ Petition is disposed of as above.

04.04.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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